

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION (DETROIT)

In re:

Patricia Crum,

Debtor.

Chapter 13
Case Number 19-51152
Hon. Mark A. Randon

ORDER SUSTAINING THE TRUSTEE'S OBJECTION TO CONFIRMATION

I. INTRODUCTION

Since the Civil War, the family of Debtor's husband has owned real property in Debord, Kentucky. Their family tradition has been to transfer ownership of the property through the male heirs. Debtor's husband owned the property when he died unexpectedly in June 2019; Debtor then became the fee simple owner. Approximately two months later, she filed bankruptcy. Debtor filed her First Amended Chapter 13 Plan using the Court's Local Form that contains a vesting provision:

Upon the Effective Date of the Plan, all property of the estate shall vest in the debtor and shall cease to be property of the estate. The debtor shall remain in possession of all property during the pendency of this case[] *unless specifically provided herein, and shall not seek to sell, transfer or otherwise dispose of such property (except in the ordinary course of debtor's business) without prior Court approval.*

(Emphasis added). Debtor wants to delete the italicized language so she can continue the tradition and transfer ownership of the property to her son. The Trustee objects. She argues that the Local Form's language, prohibiting transfer of the property without Court

approval, should not be disturbed. This disagreement is the only impediment to confirmation.

Because confirmation effectively re-confers ownership of the Kentucky property to the Debtor, the Trustee's objection *may* be overruled. However, Debtor's plan also contains form language, requiring Debtor to "remain in possession of all property during the pendency of this case[.]" Unless this language is also deleted, the Court must **SUSTAIN** the Trustee's objection.

II. ANALYSIS

When Debtor filed bankruptcy, the Kentucky property became property of the bankruptcy estate. 11 U.S.C. § 541(a)(1) (the bankruptcy estate is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case[]"). And the Bankruptcy Code requires Debtor to "remain in possession of all property of the estate." 11 U.S.C. § 1306(b). However, upon confirmation of the plan, all estate property may revest in the debtor:

- (b) Except as otherwise provided in the plan or other order confirming the plan, *the confirmation of a plan vests all of the property of the estate in the debtor.*
- (c) Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

11 U.S.C. § 1327 (emphasis added); *see also* 11 U.S.C. § 1322(b)(9) (Debtor's plan may "provide for the vesting of property of the estate, on confirmation of the plan or at a later

time, in the debtor or in any other entity[.]”). The Court must determine the meaning of “vesting” property of the estate in the Debtor after confirmation.

The Bankruptcy Code does not define “vest.” “When terms used in a statute are undefined, we give them their ordinary meaning.” *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995). “The common definition of vest is ‘[t]o confer ownership (of property) upon a person’ and ‘[t]o invest (a person) with the full title to property.’” *California Franchise Tax Bd. v. Kendall (In re Jones)*, 657 F.3d 921, 928 (9th Cir. 2011) (quoting BLACK’S LAW DICTIONARY (9th ed. 2009)).

Consistent with the dictionary definition of “vest,” upon confirmation, ownership of the Kentucky property would transfer back to the Debtor. *See Fritz Fire Prot. Co., Inc. v. Wei-Fung Chang (In re Wei-Fung Chang)*, 438 B.R. 77, 80 (Bankr. M.D. Penn. 2010) (“when property of the estate vests in the debtor under § 1327(b), he acquires something more than possession, which he held at the inception of the case”). Because the Bankruptcy Code does not require Debtor to remain in possession of the Kentucky property once the plan is confirmed, she should be able to transfer the Kentucky property after confirmation—without the Court’s permission. The problem here is that Debtor does not also seek deletion of the plan language requiring her to “remain in possession of *all property* during the pendency of this case[.]” (Emphasis added).

III. CONCLUSION

If Debtor's plan is confirmed as proposed, she will have ownership and control of the Kentucky property; it will no longer be property of the bankruptcy estate. However, because the plan also contains language requiring Debtor to remain in possession of "all" property while the case is pending, she will be prohibited from transferring the Kentucky property to her son until the case is closed. As such, the Trustee's objection must be **SUSTAINED**. However, Debtor's plan will be confirmed if: (1) she deletes the additional language requiring her to remain in possession of all property (allowing her to transfer the property to her son without prior Court approval); or (2) she maintains the form language and obtains the Court's permission to transfer the property.¹

IT IS ORDERED.

Signed on January 2, 2020



/s/ Mark A. Randon

Mark A. Randon
United States Bankruptcy Judge

¹The Court does not share the Chapter 13 Trustee's concern that a Chapter 7 Trustee would be foreclosed from recovering the property from the Debtor's son, if Debtor converts to a Chapter 7 before completing her plan payments. A viable fraudulent transfer action may lie, if the Chapter 7 Trustee can demonstrate that the transfer and conversion were intended to shield the property from creditors.